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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

The Development of Operational, )  
Technical and Spectrum Requirements )  
For Meeting Federal, State and Local )  
Public Safety Agency Communication )  
Requirements Through the Year 2010 )

WT Docket No. 96-86

Establishment of Rules and Requirements )  
For Priority Access Service )

To: The Commission

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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Date: December 22, 1997

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**To: The Commission**

**COMMENTS OF NEXTEL COMMUNICATIONS, INC.**

**I. INTRODUCTION**

Pursuant to Section 1.429 of the Rules of the Federal Communications Commission ("Commission") and the Second Notice Of Proposed Rule Making ("Notice") in the above-captioned proceeding,<sup>1/</sup> Nextel Communications, Inc. ("Nextel") respectfully submits these Comments.

In the Notice, the Commission seeks comment on a number of issues related to the future provision of public safety communications services, including the appropriate service rules for the 24 MHz of spectrum that recently was allocated for public safety use between 746 MHz and 806 MHz. The Commission also seeks comment on the potential for priority access services for public safety providers operating on commercial wireless telecommunications systems.

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<sup>1/</sup> Second Notice Of Proposed Rule Making, WT Docket No. 96-86, FCC 97-373, released October 24, 1997.

Nextel submits these comments to promote the provision of public safety communications services by commercial operators on the newly allocated public safety spectrum. Provision of these services by commercial entities would promote the Commission's goals of efficient spectrum use, interoperability and competition in the public safety services. Moreover, Nextel supports voluntary priority access services on commercial mobile radio service ("CMRS") systems.

## **II. BACKGROUND**

### **A. Background On Nextel's Services**

**Traditional SMR Services.** Nextel is the Nation's largest provider of traditional and wide-area Specialized Mobile Radio ("SMR") services. Traditional SMR services are primarily "dispatch communications" employed by companies with fleets of vehicles operating throughout a local area, e.g., a messenger service. These dispatch communications permit two-way mobile communications between a dispatcher and one or more mobile/portable units, thus enabling simultaneous communications among all members of the fleet.

**Wide-Area SMR Services.** Employing Motorola's iDEN technology, Nextel's wide-area SMR services are digital telecommunications services that provide an integrated package of not only the dispatch services described above, but also interconnected mobile telephone (cellular), alpha-numeric paging, and data capabilities. Users can employ the mobile telephone service to access anyone connected to the Public Switched Telephone Network -- just like

cellular or Personal Communications Services -- or they can instantly communicate via the dispatch service with one or more subscribers programmed into their "mobile work groups."

Nextel's wide-area SMR services incorporate digital voice encoding using Time Division Multiple Access ("TDMA"). Although Nextel does not offer encryption to ensure secure communications, its encoded TDMA digital system offers one of the highest levels of security available in commercial communications today. Encoding performs an analogous function to analog encryption, while also increasing the user's fraud protection.

**B. Potential Public Safety Applications for Nextel's Wide-Area Service**

In addition to the one-to-many "instant conferencing" capability, Nextel's iDEN technology supports direct one-to-one private communications between two mobile/portable Nextel units. This is particularly well-suited for many public safety uses -- particularly communications among different public safety agencies -- by offering a compatible feature-rich digitally-encoded alternative to current often-non-interoperable public safety formats. In fact, Nextel already has been approached by many public safety agencies expressing interest in using its iDEN product.

A prime example of the attractiveness of Nextel's wide-area SMR support for public safety interagency communications was its use in response to the Oklahoma City bombing. The Red Cross, emergency services personnel, and other public safety officials used wide-area SMR services to provide critical interagency

communications among these varying public safety agencies. This interagency use specifically addresses the Commission's concern that local, state, regional and national public safety agencies cannot currently communicate with one another, thereby offering a solution to what the Commission defines as "one of the most critical deficiencies in today's public safety communications."2/

Using Nextel's service, emergency service providers can establish "talk groups" within and among the varying agencies, enabling instant communications among any or all of the emergency personnel in their respective "talk groups." The iDEN technology employed in Nextel's wide-area SMR services also is capable of providing emergency alert/ID and priority override to help ensure that critical "talk group" communications are completed.

Nextel currently is providing commercial service in over 400 cities nationwide. These existing wide-area SMR networks cover large geographic areas, including the country's 75 largest metropolitan areas and portions of Canada through roaming agreements on iDEN systems therein. Thus, the scope of the service is not limited; rather, it can be employed on a wide-area basis in many different areas of the country as well as other parts of North America.

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2/ See Notice at para. 3.

### III. DISCUSSION

#### A. The Commission Should Allow Commercial Entities To Provide Public Safety Services on the Newly Allocated Public Safety Spectrum

In the Balanced Budget Act of 1997 ("1997 Act"),<sup>3/</sup> Congress mandated that the Commission set aside spectrum for public safety services. However, in requiring the Commission to set aside this spectrum, Congress did not mandate how those services are to be provided.<sup>4/</sup> Therefore, the Commission should allow commercial entities, such as Nextel, to provide public safety communications services to public safety providers, consistent with the 1997 Act. Specifically, commercial entities could provide services:

(A) the sole or principal purpose of which is to protect the safety of life, health, or property;

(B) that are provided -

(i) by State or local government entities; or

(ii) by non-governmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) that are not made commercially available to the public by the provider.<sup>5/</sup>

Nextel submits that a commercial entity can provide public safety services on the newly-allocated 24 MHz of public safety spectrum and ensure that those particular services are: for the sole or principal purpose of protecting the safety of life, health,

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<sup>3/</sup> Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997).

<sup>4/</sup> See Notice at para. 74.

<sup>5/</sup> *Id.* at para. 74, citing Section 3004 of the 1997 Act.

or property; provided pursuant to the request of a governmental entity whose primary mission is the provision of such services; and are not made commercially available to the public by the provider.<sup>6/</sup> Allowing commercial entities to provide communications services for public safety providers would promote competition in the public safety services as commercial entities would compete to fulfill this marketplace need. Competition, moreover, would protect public safety agencies from the use of stale technologies. As commercial operators competing for public safety accounts, these entities would be incented to constantly upgrade and improve technologies for their non-commercial systems.

Additionally, as we discussed above, the provision of public safety communications services by commercial entities can improve public safety interoperability. Injecting commercial operators into the public safety communications services, *i.e.*, providing them the opportunity to fulfill public safety needs, would provide much-needed improvements in public safety communications and promote the Commission's goals of competition, interoperability and efficiency.

**B. Priority Access Services**

**Voluntary Priority Access Service.** Nextel supports the provision of priority access services to public safety agencies,

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<sup>6/</sup> The final criteria would apply only to those services provided on the public safety spectrum. For example, Nextel might provide its integrated package of services on the public safety spectrum solely for public safety uses, while also providing those services commercially to non-public safety service providers on 800 MHz commercial spectrum.

provided that the service is voluntary, clearly defined by the public safety community, and accompanied by liability protection for those carriers choosing to provide it. Mandating that carriers provide priority access is not in the public interest in light of the newly allocated 24 MHz of public safety spectrum. As the Commission recognized in the Notice, there may be no need for priority access on commercial systems once public safety capacity is increased with the implementation of new and improved telecommunications services at 746-806 MHz.<sup>7/</sup> To the extent public safety agencies continue to demand priority access services after the implementation of new public safety communications services, commercial entities will strive to fulfill that unmet demand.

Therefore, the Commission should not mandate that commercial providers offer public safety priority access, thus requiring them to make system changes, invest much-needed resources, establish funding mechanisms and comply with another set of Commission rules before determining whether or not public safety providers will even need the service. In light of its recent spectrum allocation decisions, the Commission should allow marketplace forces an opportunity to meet demand for priority access services.<sup>8/</sup>

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<sup>7/</sup> Notice at para. 188.

<sup>8/</sup> Mandating priority access service carries with it the additional burdens of establishing cost recovery mechanisms and cost of service formulas, each of which have proven to be complex and time-consuming tasks in the wireless Enhanced 911 proceeding. Should the Commission decide to mandate priority access service, it should **not** follow the E911 funding approach. The Commission should follow up its mandate with an established mechanism that allows



**Priority Access Service Rules.** To the extent carriers choose to provide priority access services, the Commission should establish clear standards regarding those entities entitled to the service, how it should be provided and limitations on liability. Nextel asserts that priority access service should be available to a broader range of "public safety providers" than are eligible for using the 24 MHz of public safety spectrum.<sup>9/</sup> Because the Commission excludes from the public safety spectrum those organizations "the sole or principal purpose of which is not to protect the safety of life, health or property; and providers of commercially available public safety services,"<sup>10/</sup> it should ensure that such entities, e.g., the American Automobile Association, private ambulance services, public utility and power companies, have the ability to contract for priority access service with commercial operators.

Providing priority access service to public safety agencies and emergency service providers in emergency situations is only viable to the extent the Commission provides "specifically for limitations on liability under Section 202 [of the Communications Act]."<sup>11/</sup> Nextel asserts that priority access is consistent with Section 202 because those customers are not "similarly

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carriers to quickly and efficiently recover their costs of providing the service.

<sup>9/</sup> See Notice at para. 75.

<sup>10/</sup> *Id.* at para. 76.

<sup>11/</sup> *Id.* at para. 200.

situated" to any other customer on the carrier's system, i.e., their public interest obligation to protect the life, health and property of citizens results in a user classification distinguishable from all other users. Permitting the public safety user priority access over other system users during a national security crisis or emergency preparedness response situation is not unjust and unreasonable discrimination.<sup>12/</sup>

To the extent that a commercial entity chooses to provide priority access for certain pre-subscribed public safety and emergency service providers, the Commission should, consistent with the National Communications System's proposal,<sup>13/</sup> mandate specific standards and also clarify that priority access does not guarantee a completed call; it only guarantees access to the next open channel on the system. Like any other wireless communications call, there are circumstances beyond the system operator's control that can result in a dropped call, and priority access should be defined accordingly.

Additionally, carriers providing priority access service should be protected from liability that may arise as a result of a congested system during an emergency or disaster. To the extent a non-priority access user is unable to access a channel during an

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<sup>12/</sup> In its Petition for Rule Making, the National Communications System defines an emergency situation as one when "cellular congestion blocks network access and the user must establish communications to fulfill a [National Security/Emergency Preparedness] mission." See Petition for Rulemaking of the National Communications Association, filed October 19, 1995, at Appendix B, page 7.

<sup>13/</sup> *Id.* at para. 176.

emergency, a carrier cannot be liable for failing to complete that call. Should the Commission determine that priority access services are in the public interest, it also must recognize that they place the interests of the entire community over the interests of the individual. As a result, the carrier must be insulated from liability should a customer be unable to access the system during an emergency situation.

#### IV. CONCLUSION

For the reasons discussed herein, Nextel respectfully requests that the Commission permit commercial operators to provide public safety services, as defined in the 1997 Act, on the recently allocated 24 MHz of public safety spectrum, and provide priority access service on a voluntary basis to any public safety agency or emergency services provider (public or private).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert S. Foosaner', is written over a horizontal line.

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Date: December 22, 1997

## CERTIFICATE OF SERVICE

I, Ladonya D. Miller, hereby certify that on this 22nd day of December 1997, I caused a copy of the attached Comments of Nextel Communications, Inc. to be served by hand delivery to the following:

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